

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph A. Pitts Trucking, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation Tax :
under Article 9 of the Tax Law for the Years Ended :
12/31/76-12/31/79 & the Years Beginning 1/1/77 - :
1/1/80. :

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of July, 1984, he served the within notice of Decision by certified mail upon Joseph A. Pitts Trucking, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Joseph A. Pitts Trucking, Inc.
P.O. Box 60901
Rochester, NY 14606

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
18th day of July, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Joseph A. Pitts Trucking, Inc.

:

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation Tax
under Article 9 of the Tax Law for the Years Ended:
12/31/76-12/31/79 & the Years Beginning 1/1/77 - :
1/1/80.

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of July, 1984, he served the within notice of Decision by certified mail upon Michael Swartz, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Swartz
1556 East Ridge Rd.
Rochester, NY 14621

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
18th day of July, 1984.

David Parchuck

James A. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 18, 1984

Joseph A. Pitts Trucking, Inc.
P.O. Box 60901
Rochester, NY 14606

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Michael Swartz
1556 East Ridge Rd.
Rochester, NY 14621
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH A. PITTS TRUCKING, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9 of the Tax Law for the Years Ended	:	
December 31, 1976 through December 31, 1979 and	:	
the Years Beginning January 1, 1977 through	:	
January 1, 1980.	:	

Petitioner, Joseph A. Pitts Trucking, Inc., P.O. Box 60901, Rochester, New York 14606, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9 of the Tax Law for the years ended December 31, 1976 through December 31, 1979 and the years beginning January 1, 1977 through January 1, 1980 (File No. 32652).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on March 14, 1984 at 9:15 A.M. Petitioner appeared by Michael Swartz, P.A. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner is subject to tax as a transportation corporation under sections 183 and 184 of the Tax Law.

FINDINGS OF FACT

1. On October 10, 1980 and November 20, 1980, the Audit Division issued eight notices of deficiency pursuant to Article 9 of the Tax Law against petitioner, Joseph A. Pitts Trucking, Inc. Four notices were issued under

section 183 of the Tax Law for the years ended December 31, 1976 through December 31, 1979 and four were issued under section 184 of the Tax Law for the years beginning January 1, 1977 through January 1, 1980 in amounts as follows:

<u>Period Ended</u>	<u>Tax</u>	<u>Section 183</u> <u>Interest</u>	<u>Credit</u>	<u>Amount Due</u>
12/31/76	\$ 391.94	\$ 0	\$ 391.94	\$ 0
12/31/77	1,321.19	146.69	649.29	818.59
12/31/78	1,321.20	191.79	0	1,512.99
12/31/79	739.63	44.50	0	784.13
Total	<u>\$3,773.96</u>	<u>\$382.98</u>	<u>\$1,041.23</u>	<u>\$3,115.71</u>

<u>Period Beginning</u>	<u>Tax</u>	<u>Section 184</u> <u>Interest</u>	<u>Credit</u>	<u>Amount Due</u>
1/1/77	\$ 75.00	\$ 0	\$ 75.00	\$ 0
1/1/78	75.00	16.39	0	91.39
1/1/79	75.00	10.89	0	85.89
1/1/80	75.00	4.51	0	79.51
Total	<u>\$ 300.00</u>	<u>\$ 31.79</u>	<u>\$ 75.00</u>	<u>\$ 256.79</u>

2. Petitioner was incorporated in New York in 1968 as a general business corporation. Petitioner is engaged in the operation of a dump truck service primarily on construction sites where its trucks haul dirt and gravel in connection with excavation work. Petitioner employs its own two trucks in the operations and if more are needed for a particular job, it hires additional trucks and drivers on an independent contract basis. Petitioner's trucks generally do not leave the construction sites, rather, they remove dirt and gravel from one area of the site which is being excavated and move it to another area of the site where it can be utilized in construction. If pipe is being laid, the trucks will haul the excavated dirt and gravel away and replace it after the pipe has been laid. Any extra dirt and gravel is dumped in a field and then leveled by the contractor.

3. Petitioner had originally filed corporation franchise tax reports as a general business corporation under Article 9-A of the Tax Law. At some point in time, however, it appears that petitioner may have filed its tax reports as a transportation corporation under Article 9. For each of the years in issue, petitioner filed as an Article 9-A general business corporation.

4. The Audit Division determined that petitioner was engaged in the conduct of trucking and was therefore subject to tax under sections 183 and 184 of the Tax Law as a transportation corporation.

5. Petitioner argues that its dump truck service is not a transportation service since it does not carry goods or passengers from place to place; all it does is pick up and dump dirt. Petitioner contends, therefore, that its operation is more in the nature of a disposal service corporation which is subject to tax as a general business corporation under Article 9-A.

CONCLUSIONS OF LAW

A. That section 209.1 of the Tax Law imposes the corporation franchise tax on all domestic corporations, and all foreign corporations doing business, or employing capital, or owning or leasing property, or maintaining an office in New York, unless specifically exempted or subject to other New York franchise taxes.

B. That transportation and transmission companies are subject to an annual franchise tax for the privilege of exercising a corporate franchise or holding property in the state, based upon capital stock in the state during the preceeding year (Tax Law §183), and to an additional annual franchise tax based upon gross earnings in the state during such year (Tax Law §184).

C. That the basic and additional franchise taxes imposed on transportation and transmission companies apply to every domestic corporation which is formed for or principally engaged in the conduct of:

"aviation, railroad, canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, trucking, taxicab, telegraph, telephone, palace car or sleeping car business..." (Tax Law §§183, 184).

D. That "[i]n its ordinary sense, 'transportation' comprehends any real carrying about or from one place to another, and not the mere transfer of a thing from one person to another. It implies the taking up of persons or property at some point and putting them down at another, and signifies at least a movement of some sort between termini or places" (87 C.J.S. Transportation). Trucking, generally, involves the process or business of carting goods on trucks (Webster's New International Dictionary [2nd Ed.]). Petitioner's business involves transporting dirt and gravel in trucks from one area of a construction site and dumping it either in a field or in a different area of the site or replacing it in the same area. Petitioner's sole activity is transportation by truck. That it confines its transporting to a limited area is of no consequence since it is not necessary that "transportation" be between two definite points and, if there is a forward movement, distance is not important (see Citizens Casualty Company of New York v. L.C. Jones Trucking Company, 238 F.2d 369, 374-73; United States v. Twentieth Century - Fox Film Corp., 235 F.2d 719, 722). The fact that petitioner was not incorporated under the Transportation Corporation Law is of no significance in this matter since a corporation is to be taxed according to the business it conducts rather than the law under which it was organized (See Newton Creek Towing Co. v. Law, 205 A.D. 581). Petitioner


engages in the business of transportation by truck and is therefore subject to tax as a transportation corporation under sections 183 and 184 of the Tax Law.

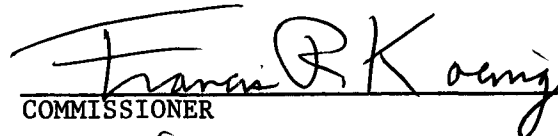
E. That the petition of Joseph A. Pitts Trucking, Inc. is denied and the notices of deficiency issued on October 10, 1980 and November 20, 1980 are sustained.

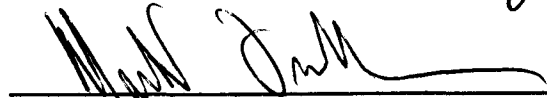
DATED: Albany, New York

STATE TAX COMMISSION

JUL 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER